

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

NICHOLAS WOODS,

Plaintiff and Appellant,

v.

COMMISSION ON PROFESSIONAL
COMPETENCE,

Defendant and Respondent.

HUNTINGTON BEACH UNION HIGH
SCHOOL DISTRICT,

Real Party in Interest.

G056431

(Super. Ct. No. 30-2016-00878624)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Melissa
R. McCormick, Judge. Affirmed.

Estelle & Kennedy, Michael L. Kennedy and Barbara M. Moore for Appellant.

No appearance for Respondent.

Atkinson, Andelson, Loya, Ruud & Romo, Anthony P. De Marco and Heather Dozier Houlemarde for Real Party in Interest.

* * *

Nicholas Woods appeals from the trial court's judgment upholding the decision of the Commission on Professional Competence (the Commission) to terminate his employment as a teacher for the Huntington Beach Union High School District (the District). The Commission held a hearing over 17 days. The District presented evidence to support termination. Woods attempted to rebut the District's contentions that he should be dismissed on four alternative, independent grounds, including that he was unfit to teach, unsatisfactory performance, unprofessional conduct, and persistent violation of District rules. When the Commission concluded by unanimous vote that good cause warranted Woods's dismissal on all four grounds alleged, Woods filed a petition in the trial court seeking a writ of administrative mandate (Code Civ. Proc., § 1094.5) to overturn the Commission's decision. After a hearing, the trial court denied the petition.

On appeal, Woods contends the Commission's decision must be overturned on due process grounds for lack of notice and improper exclusion of evidence. He also challenges the sufficiency of the evidence to support his termination. As we explain, these arguments lack merit. We therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The District's Deputy Superintendent of Human Resources, Carolee Ogata, Ed.D., recommended Woods's dismissal in May 2015 by serving him with a Notice of Intent to Dismiss and a Statement of Charges alleging four grounds for dismissal. The notice initiated dismissal proceedings before a three-member panel of the Commission

established under Education Code section 44944, subdivision (c), with one member selected by Woods, one by the District, and the third position occupied by an administrative law judge (ALJ).¹

Woods had advanced from probationary status to become a permanent, certificated teaching position at the beginning of the 2004-2005 school year. He taught Language Arts at Westminster High School, including English 4 CP (college prep), California High School Exit Examination remediation, English 3 CP, English 4 “sheltered,” and English 1 sheltered. A sheltered class is one in which students’ primary language is not English, but they have sufficient English proficiency for the curriculum.

As restricted by the governing statute of limitations, the District presented evidence spanning the previous four academic years to support its request for dismissal. (§ 44944, subd. (b)(2)(A).) The District presented testimony from nine witnesses, including its current and former assistant superintendents of educational services, its director of curriculum and instruction, several of Woods’s current and former principals and assistant principals, and his peer assistance and review program provider. Woods also testified. At the conclusion of the 17-day hearing, the Commission expressly found Woods’s testimony not credible and the testimony of the District’s witnesses credible.

The District’s evidence included the following. Assistant Principal Ted Reid testified Woods provided his students with inaccurate information that could affect their academic performance, including on SAT and ACT examinations. Reid testified that Woods failed to engage students with appropriate questions to foster higher-level thinking skills. He also testified that Woods’s lack of organization and failure to provide a consistent, structured, and disciplined environment resulted in a loss of learning opportunities for his students. Dr. Owen Crosby testified that Woods created an undisciplined classroom environment full of disruptions that was not conducive to

¹ All further undesignated statutory references are to the Education Code.

learning. Principal Joseph Fraser testified that Woods's poor performance negatively impacted student learning and achievement. Dr. Donald Austin testified that, having observed every classroom in the District, Woods provided "the poorest teaching I had seen during my entire three years."

The District also presented, and the Commission admitted, 60 exhibits documenting Woods's alleged teaching deficiencies and his failure to remediate those deficiencies. The exhibits included reports made by District observers in his classroom, summaries of conferences held with Woods after the observed periods, teaching performance evaluations, notices to Woods of his unsatisfactory progress, mutual assistance plans (MAPs), peer assistance and review documentation, and a notice given to Woods in January 2014 of unsatisfactory performance and unprofessional conduct, as a prerequisite to termination (§ 44938).

The January 2014 notice did not commence or require termination proceedings. Instead it notified Woods of two categories of alleged deficiencies, unsatisfactory performance and unprofessional conduct. The notice provided a detailed description spanning 16 pages of specific examples of deficiencies to aid Woods in recognizing and correcting them.

At the hearing before the Commission, the District presented evidence specific to each school year, including that in 2011-2012 Woods's performance was unsatisfactory in the areas of classroom management, student engagement, instructional strategies, and use of instructional time. The District presented evidence it notified Woods of his unsatisfactory performance and conduct and engaged in efforts to aid him in remediation, including more than two dozen classroom observations, conference summaries, MAP meetings and plans, and notices that his progress remained unsatisfactory.

The District presented similar evidence for the 2012-2013, 2013-2014, and 2014-2015 school years, including evidence that Woods's remediation efforts under a peer assistance and review (PAR) program were unsuccessful.

In its 49-page decision the Commission made detailed findings before concluding each of the grounds alleged by the District supported terminating Woods's employment as a teacher. As to unsatisfactory performance, the Commission observed that the District conducted more than 25 comprehensive observations of Woods's classroom performance, followed by detailed conference summary memoranda or progress reviews.

The Commission observed, "Every single summary noted [Woods's] deficiencies in the areas of classroom management, student engagement, instructional strategies, and lesson design. Specifically, in the area of classroom management, the administrators observed, among other things, students placing their heads on the desks, talking while [Woods] taught class, engaged in off-task behaviors, and, despite [Woods's] classroom rules prohibiting such conduct, they witnessed students playing with electronic devices (e.g., cell phones), and maintaining earbuds in their ears. In the area of student engagement, the administrators observed, among other things, a lack of participation by students during classroom discussions, off-task behaviors, [Woods] failing to relate the material to the students' lives, and [despite repeated administration direction that it contributed to an undisciplined classroom environment and wasted time, Woods continued] distributing materials one student at a time, causing students to engage in personal discussions while waiting for [Woods] to complete his distribution of materials. In the area of instructional strategies, administrators observed, among other things, [Woods's] failure to ask questions designed to engage students in critical thinking and analysis, to effectively employ strategies to check for understanding, and to promote an overall environment of rigor."

The Commission made similar findings concerning Woods's unfitness to teach, unprofessional conduct, and repeated violation of District rules, including Woods's "failure to adhere to the seven major duties set forth in [the] District's teacher position description," "fail[ure] to apply the California Standards for the Teaching Profession as required by the District," "fail[ure] to comply with multiple directives issued by administrators over the years," and "continual unwillingness or inability to adhere to specific orders issued by those in authority over him, including tasks requiring easy execution."

The Commission ordered Woods's dismissal "forthwith," which Woods failed to overturn by administrative writ petition in the trial court. He now appeals.

DISCUSSION

1. *Notice*

Woods contends the Commission lacked jurisdiction to terminate his employment because the District failed to provide effective notice under section 44938 of two grounds for his dismissal. Section 44938 requires written notice to an employee of the employee's alleged unprofessional conduct and unsatisfactory performance, specifying the nature of the conduct and providing particular examples or "instances of" substandard behavior "to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge." (§ 44938, subd. (a).)

Woods does not dispute that the notice the District gave him in January 2014 was timely because it preceded dismissal proceedings by the requisite 45 days for unprofessional conduct and 90 days for unsatisfactory performance. (§ 44938, subds. (a) & (b)(1).) Specifically, the District served Woods with notice of his deficiencies in January 2014 and did not initiate the dismissal process before the Commission until 16 months later in May 2015 by serving Woods with a "Statement of Charges." Instead, Woods argues the January 2014 notice was deficient because of

alleged failures in the evaluation the District conducted regarding his teaching performance; the evaluation was included with the notice. He also faults the District's May 2015 statement of charges related to the dismissal hearing for including instances of conduct illustrating his alleged failings that postdated and supplemented those listed in the deficiency notice the District gave him in January 2014.

Notice is an essential element of due process. (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 215.) Because Woods's claims turn on his interpretation of the notice requirements established by statute, our review is de novo. (*Nathan G. v. Clovis Unified School Dist.* (2014) 224 Cal.App.4th 1393, 1400.) In ascertaining the meaning of statutes, "we examine the statutory language and give the words 'a plain and commonsense meaning.'" (*Ibid.*)

A. *Most Recent Stull Act Evaluation*

We first address Woods's contention that alleged deficiencies in the performance evaluation the District included in the January 2014 deficiency notice invalidated the notice. The Stull Act, now codified in section 44660 et seq., "requires evaluation and assessment of each permanent certificated employee at least every other year, and a conference with the employee concerning the evaluation." (*Tarquin v. Commission on Professional Competence* (1978) 84 Cal.App.3d 251, 258 (*Tarquin*).) Section 44938 requires that in providing notice of unsatisfactory performance and unprofessional conduct, a school district must include "the evaluation made pursuant to" the Stull Act. (§ 44938, subs. (a) & (b)(2).)

Relying on *Tarquin*, Woods asserts "the Stull Act evaluation attached to the Notice must be for the current school year and not a prior school year." Before turning to *Tarquin*, we observe that nothing in section 44938 specifies such a requirement; the Stull Act requires biennial teacher evaluations. (§ 44664, subd. (a)(2).) Under Woods's construction, incompetent teachers would be immune every other year from notice

leading to termination proceedings simply for lack of a Stull Act evaluation conducted that year. No such limitation is evident in section 44938.

Nor does *Tarquin* aid Woods. The *Tarquin* court observed only that, because the teacher was entitled under the Stull Act's biennial schedule to an evaluation during the school year in which he was served notice of failing performance, the school district could not dispense with the evaluation due that year. (*Tarquin, supra*, 84 Cal.App.3d at p. 259.) The court did not say the evaluation had to precede notice. Nor did the *Tarquin* court suggest that the evaluation the district had performed two years earlier was insufficient to constitute adequate notice *if it had been attached* to the district's notice, provided the employee also received his required evaluation for the current year. Unlike in this case, it appears the district's attempts to provide notice in *Tarquin* "did not include [a] Stull Act evaluation of respondent's performance" at all. (*Ibid.*)

Those are not the facts here. The District included in its January 2014 notice the most recent evaluation for Woods, which was from the 2012-2013 school year. The District attempted to help Woods remediate his performance and conduct in the 2012-2013 and 2013-2014 school years, but to no avail. Unlike in *Tarquin*, in addition to providing the most recent evaluation at the time of notice, the District here conducted an evaluation in May 2014 for the current 2013-2014 school year and provided it to Woods. The following year, the District also conducted and provided to Woods an evaluation of his teaching performance for the 2014-2015 school year, the year it initiated dismissal proceedings in May 2015. Woods's claim that he was denied the notice to which he was entitled for lack of a current evaluation is therefore without merit.

B. *Deficient Stull Act Evaluation*

Next, Woods argues the evaluation the District attached to its January 2014 notice rendered the notice void under section 44938's notice provisions because the

evaluation was deficient under the Stull Act. Specifically, he argues the evaluation failed to meet the Stull Act requirement because “[i]t did not take into consideration the progress of the students.” He relies on the fact that the Stull Act lists student progress toward district-established “standards of expected pupil achievement at each grade level” among considerations for school district teaching evaluations. (§ 44662, subd. (a).) Other considerations informing a district’s evaluations of its teachers include the employee’s “instructional techniques and strategies,” “adherence to curricular objectives,” and “establish[ing] and maintain[ing] a suitable learning environment.” (*Id.*, subd. (b)(2)-(4).)

Woods cites no authority for his claim that a Stull Act evaluation that is allegedly deficient in one or more respects vitiates the effectiveness of the notice to which it is attached. Woods makes no argument beyond his bare assertion that notice is invalid on this ground. Assertions made without authority or reasoned argument are deemed waived. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52; Cal. Rules of Court, rule 8.204(a)(1)(B).)

In any event, there is no merit in Woods’s claim. Section 44938 does not state that teacher evaluations provided with a district’s notice must meet any particular criteria for the notice of unsatisfactory performance or unprofessional conduct to be effective. The statute requires only that an evaluation must be included with the notice. (§ 44938, subds. (a) & (b)(2).)

In our view, and in light of Woods’s failure to provide any applicable authority or reasoned argument, the deficiency he alleges regarding the alleged absence of student progress as an express criterion in District evaluations of his teaching performance goes only to the weight of the District’s claims against Woods for poor performance and conduct allegedly warranting dismissal. We see no reason why any alleged omission of the student progress criterion should operate as a bar to the proceedings on grounds of lack of notice. This is particularly true here where the

evaluation criteria the Stull Act identifies in section 44662, subdivision (b), are overlapping and mutually reinforcing. In other words, the student progress that teachers must strive for is necessarily interwoven into the other criteria for evaluating the teacher's performance and conduct, including instructional techniques, adhering to curricular objectives, and fostering a learning environment for student progress. (*Id.*, subd. (b)(1)-(4).)

Though “an ‘elusive concept’” (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 829), the notice necessary to satisfy due process is “flexible” both in theory and practice, and “tailor[ed] . . . to the particular need.” (*Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1072.) To pass due process muster, notice must be “‘reasonably calculated to apprise interested parties of’” action affecting their interests, so they have an informed “‘opportunity to present their objections.’” (*Ibid.*)

Here, the District's January 2014 notice provided a lengthy and detailed statement of Woods's alleged failings. Those asserted deficiencies in “further[ing] the educational goals of the District” included “ineffective techniques, failure to use a variety of instructional strategies, lack of student engagement, failure to engage students in critical thinking . . . , lack of organization, failure to understand and organize subject matter for student learning, failure to communicate learning goals to students, a failure to adequately check for understanding and assess student learning, failure to create an effective learning environment, failure to enforce standards for student behavior or [to] establish student routines conducive to learning[,] failure to effectively use instructional time, failure to plan and design learning experiences . . . designed for all students; and your failure to significantly improve your professional practice as a teacher.”

The notice detailed categories of Woods's alleged unprofessional conduct, including “failure to attend required meetings or follow testing protocols, failure to timely and adequately communicate with staff and administrators, failure to conduct

yourself in a collegial manner with your supervisor, failure to adequately prepare for instruction or maintain organization during instruction, failure to know your students' names[,] failure to maintain accountability for your students[,] failure to utilize appropriate management strategies for dealing with student behavior, failure to ensure all content standards are met for your students, and failure to accurately assess students.”

The purpose of notice, as stated in section 44938, is not only to identify a teacher's alleged weaknesses constituting ineffective performance and unprofessional conduct so that the teacher can “present [his or her] objections” as required by due process (see *Ryan, supra*, 94 Cal.App.4th at p. 1072), but also “to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge.” (§ 44938, subd. (a).)

The District met this requirement. The District furnished Woods ample time to address its stated concerns—more than 12 months beyond the 45 to 90-day minimum specified by statute. (§ 44938, subds. (a) & (b)(1).) The District in its notice also provided Woods a detailed list of 40 single-sentence directives to aid him in “overcom[ing] the deficiencies noted above.” In light of the District's detailed description in its January 2014 notice of Woods's asserted categories of unsatisfactory performance and unprofessional conduct—many of which touched on student progress directly or indirectly—there is no merit in Woods's claim that the District's alleged failure to address student progress explicitly in the 2012-2013 evaluation attached to the notice rendered the notice void.

C. *Additional Instances of Unsatisfactory Performance or Conduct*

Finally, Woods contends, based on lack of notice, that due process precluded the District, when it finally initiated dismissal proceedings before the Commission in May 2015, from including in its “Statement of Charges” instances of alleged failings that postdated the January 2014 notice the District had given Woods.

For example, in its May 2015 request to the Commission to set a dismissal hearing, the District asserts “On or about February 12, 2014, you failed to perform your job duties in a satisfactory manner.” The allegation continued, “Specifically, Principal Crosby conducted an observation of your classroom and noted deficiencies in the area of classroom management, lesson delivery, and student engagement, including the following: [detailing seven alleged failings, including unclear “directions for homework”]. [¶] Principal Crosby provided you with several recommendations for improving your performance, including the following: [listing nine recommendations].”

Woods asserts that because this alleged failure to perform his duties on February 12, 2014, postdated the notice the District gave him in January 2014, the February 2014 allegations could not be used against him in the dismissal proceedings due to lack of notice.

We disagree. The District’s “Statement of Charges” for the dismissal proceedings included the same two *grounds* for which it was earlier required to provide him a deficiency notice: unprofessional conduct and unsatisfactory performance. (§§ 44932, subd. (a)(2) & (5); 44938.) The fact that the District produced additional evidence of conduct falling into the same *categories* of unprofessional conduct and unsatisfactory performance for the dismissal hearing does not constitute a notice violation because the categories remained the same. Woods does not assert a discovery violation; indeed, he had notice of the supplemental alleged factual basis for the District’s charges in the District’s dismissal petition itself.

We have found no authority, and Woods provides none, to support his contention that a party is limited to proceeding on evidence it references in an initial notice predating adjudication of the parties’ claims. To the contrary, the limitations period on evidence that may be presented in dismissal hearings looks backward, not forward. (§ 44944, subd. (b)(2)(A).) It precludes evidence or testimony “relating to matters that occurred more than four years before the date of the filing of the notice,”

with no mention of evidence postdating the notice. (*Ibid.*) Nothing we find in the detailed statutory framework governing dismissal and suspension proceedings (*ibid.*) supports Woods’s claims regarding notice violations. We therefore reject them as a basis to overturn the trial court’s judgment affirming the Commission.

2. *Exclusion of Evidence*

Woods contends the Commission violated his right to due process when the ALJ who conducted the dismissal hearing excluded relevant evidence of the District’s “own misconduct, improper motives and violations of the law.” The District’s alleged “misconduct” and “violations of the law” appear to be unspecified violations of the District’s collective bargaining agreement (CBA) with its teachers. As best we can discern, Woods claims those alleged CBA violations fatally compromised the District’s investigation and evaluation of his competency as a teacher. But it does not appear he made an offer of proof or provided examples of any such alleged District CBA violations during his hearing.

Before an alleged error related to the exclusion of evidence may be considered on appeal, the record must show the “substance, purpose, and relevance of the excluded evidence” was “made known” to the court below by an offer of proof. (Evid. Code, § 354.) This requirement enables the trial court or other decisionmaker to make an informed ruling and “provide[s] the reviewing court with the means of determining error and assessing prejudice.” (*People v. Schmies* (1996) 44 Cal.App.4th 38, 53.) “[A]n offer of proof must be specific. It must set forth the actual evidence to be produced and not merely the facts or issues to be addressed and argued.” (*Ibid.*)

Woods now argues “[t]he *District’s* exhibits were woefully deficient in that the District had sanitized from *its* proffered record Mr. Woods’s lengthy and detailed responses, when he was afforded the opportunity to respond as the law requires.” (Italics added.) Woods does not explain the nature or content of his responses or even what they

were in response to, and he also does not say the ALJ excluded them—only that the District did not offer them on his behalf. But it appears Woods introduced them into evidence for the Commission’s consideration because his contemporaneous written responses to the teacher evaluations and conferences the District conducted fill a considerable portion of the administrative record. We see no due process violation in the District failing to include these responses in its exhibits during the dismissal hearing because it is axiomatic in any proceeding that each party must offer its own evidence.

In any event, Woods forfeits his claim of due process error in the exclusion of evidence because he provides no record citation demonstrating he preserved it in the trial court. (Evid. Code, § 354; Cal. Rules of Court, rule 8.204(a)(1)(C).) In an appeal from a trial court’s independent review of an administrative hearing, we are reviewing the correctness of the trial court’s decision. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1461 (*San Diego Unified*).) If a claim of error in the administrative hearing was not presented to the trial court, we cannot say the trial court erred because we must presume its rulings are correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) Simply put, a trial court does not err “in failing to conduct an analysis it was not asked to conduct.” (*Laboratory Specialists Internat., Inc. v. Shimadzu Scientific Instruments, Inc.* (2017) 17 Cal.App.5th 755, 764.)

Nevertheless, even assuming *arguendo* that Woods did not forfeit his claim in the trial court, our review of the administrative hearing transcript shows no error in the ALJ’s ruling. An ALJ’s evidentiary rulings must be upheld absent a clear abuse of discretion. (*Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431-1432.)

At the dismissal hearing, the District’s attorney observed that “of the many grievances filed by [Woods] under the Collective Bargaining Agreement, none of them were resolved in his favor.” Woods did not dispute this assertion. The District opposed

“relitigat[ing] unsuccessful grievances before this Commission when that’s outside your jurisdiction” The ALJ expressed her similar concern about “turning this Hearing into something that it is not designed to be. This is simply a Dismissal hearing,” not “a griev[ance] procedure.”

The ALJ nonetheless expressly ruled that she was “happy” to receive Woods’s evidence, if any, showing his “state of mind . . . during certain periods of time, why he acted or didn’t act or what have you. “ Presumably this extended to considering Woods’s testimony that he responded in various ways to the District’s investigation into, and evaluation of, his teaching competency because he regarded the process as unfair or flawed based on his interpretation of the CBA. Nothing suggests the ALJ refused to entertain a due process challenge to the District’s methods. To the contrary, the ALJ’s manifest receptivity to Woods’s state of mind evidence indicates she was prepared to consider any evidence offered by Woods related to his perception that any particular evaluation process or procedure was unfair or flawed regardless of whether it constituted a CBA violation. The record does not support Woods’s due process claim related to the exclusion of evidence.

Nor does the record support Woods’s claim that the ALJ “prohibited” him from introducing “evidence of the District’s financial motive for his termination.” Woods asserts he was terminated after 13 years because the District wanted to save money by employing “a younger, less expensive teacher.” Because Woods provides no record citation of an offer of proof to support his claim of a financial motive, nor of a ruling excluding such evidence, his appellate challenge is forfeited. The record shows Woods made his costs-savings claim and the District denied it. Dr. Ogata testified Woods’s dismissal was not motivated by a desire to replace him with a teacher lower on the pay scale. We find no error.

3. *Sufficiency of the Evidence*

Woods challenges the sufficiency of the evidence to support the Commission's decision to terminate his employment and the trial court's ruling upholding the Commission's judgment. "After the superior court makes an independent judgment upon the record of an administrative proceeding[, the] scope of review on appeal is limited." (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180 (*San Dieguito Union*).) The deferential substantial evidence standard applies (*ibid.*), under which we must resolve all conflicts in the evidence in favor of the party prevailing below and "give that party the benefit of every reasonable inference in support of the judgment." (*San Diego Unified, supra*, 194 Cal.App.4th at p. 1461.) We may not reweigh the evidence to substitute our judgment for the trier of fact's; instead, "[o]ur inquiry 'begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted,'" to support the judgment. (*Id.* at p. 1462.)

Section 44932 provides several independent grounds to terminate a permanent school employee for cause, including evident unfitness for service, unsatisfactory performance, unprofessional conduct, and persistent refusal to follow reasonable regulations prescribed by his or her school district. (§ 44932, subd. (a)(2), (5), (6) & (8).) Particular acts or omissions may fall under more than one of these grounds for removal. (*Tarquin, supra*, 84 Cal.App.3d at p. 260.) Each of the separate statutory grounds suffice individually for discharge of a permanent teacher. (*Ibid.*)

"'[E]vident unfitness for service' connotes a fixed character trait" involving "inadequacies" that render the individual "clearly not fit, not adapted to or unsuitable for teaching.'" (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) The trait is deemed fixed where it is "not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*)

Unsatisfactory performance is measured against the standards the district sets for its teachers, including their evaluations as provided for in section 44660, with the necessary limitation that the district may not discharge on arbitrary or capricious grounds teachers who perform their duties “efficiently and well.” (See *Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn. 20.) Unprofessional conduct is conduct unbecoming a member in good standing in the teaching profession. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553, overruled on another ground in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 585, 587, fn. 7.) “[P]ersistent . . . ‘violation’” of school regulations “requires a showing of intentional and continual refusal to cooperate.” (*San Dieguito Union, supra*, 174 Cal.App.3d at p. 1196, italics omitted.)

So-called *Morrison* factors derived from *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*) provide a framework for evaluating a teacher’s conduct and overall fitness for service (*id.* at pp. 229-230), but not all factors may apply in a given case. (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 383.) Those factors include: (1) the likelihood the conduct adversely affects students, fellow teachers; (2) the degree of adversity “anticipated” from the conduct; (3) whether the conduct was recent or remote in time; (4) the type of credential held by the teacher; (5) the circumstances extenuating or aggravating the conduct; (6) the likelihood the conduct will recur; and (7) whether disciplinary action will chill constitutional rights. (*Ibid.*)

The Commission found the parties did not contend *Morrison*’s “chilling” or notoriety factors applied, and Woods does not cite the administrative or trial record to suggest he raised these issues. The Commission gave the first *Morrison* factor the most weight, finding that despite the District’s efforts to “remediate [his] deficiencies,” Woods’s students “experienced a constant loss of instructional time, instruction that lacked rigor, a noisy and poorly managed classroom, and a number of other unacceptable

practices, all obstructing their ability to access the curriculum.” The Commission found the inadequacies were not remote in time, but instead recent, pervasive, and highly likely to recur because Woods “was unsuccessful in remediating his deficiencies, despite substantial intervention.”

The Commission found that Woods’s inability to make “marked and sustained improvement” constituted an aggravating factor in light of the “extensive, intensive, and repeated assistance and guidance” the District had provided. The District’s efforts “include[ed] more than 25 conference summaries and formal evaluations during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 school years, multiple MAP periods, and participation in the PAR program,” as well as “multiple Notices of Unsatisfactory Progress, and a Notice of Unprofessional Conduct and Unsatisfactory Performance” The trial court’s findings largely replicated the Commission’s, noting that “the District provided numerous monitors to evaluate and assist Woods[, but those] efforts were consistently unsuccessful.”

On appeal, Woods essentially reargues the evidence in the light most favorable to his position, contrary to the standard of review. He contends that instead of aid, “the District bombarded [his] classroom with a string of observers . . . simply [in] an effort to ‘paper’ his file with justification for his termination, and not any sincere effort to try to improve the situation.” He asserts the District held him to “a standard of perfection, not competence.” He also blames his performance on “the segment of the student body he was tasked . . . to teach: students in remedial classes and students whose first language was not English”; he laments his plight “as a teacher struggling to engage students who have no interest in school.” Woods ignores that, among many other interventions, the District gave him the opportunity to observe accomplished teachers who implemented District-recommended measures and strategies that were successful with students facing the same challenges. On appeal, he continues to blame factors such as the time of day for his alleged failings because he “was oftentimes observed during

zero and 4th period . . . at the beginning of the school day[] and before lunch when students are typically more rambunctious and loud.”

Woods also disputed that District personnel observed a poor learning environment or disruption in his classroom. In his written responses to observations made by administrators, counselors, and education specialists, he stated they did not observe what they said they observed, and he disputed their suggestions for improvement. For example, observers noticed students with their heads on their desks, Woods allowing students to enter and depart the classroom without regard to him, and allowing students to talk and laugh throughout the class period, sometimes “incessantly.” In response, Woods said he did not consider himself to be the “posture police” or “bladder police,” or he denied the events had occurred as observed.

In its unanimous 49-page decision, the Commission concluded that “cause exists to dismiss [Woods] from his employment with the District . . . for his unsatisfactory performance, persistent violation of or refusal to obey reasonable regulations, evident unfitness for service, and unprofessional conduct.” The decision included detailed factual findings that amply support the Commission’s conclusion. The Commission also made express credibility findings. Specifically, “[t]he Commission found credible the testimony of Mr. Reid, Mr. Crosby, Dr. Rasmussen, and Mr. Fraser, as they observed [Woods] independently over a period of time, and reached similar conclusions concerning [his] performance. Their perspectives were corroborated by the testimony of Mr. Herzfeld, Dr. Austin, and Ms. Mayhugh, who also observed [Woods], and, like Mr. Reid, Mr. Crosby, Dr. Rasmussen, and Mr. Fraser, witnessed [Woods’s] deficiencies and lack of effectiveness in the areas of classroom management, student engagement, instructional strategies, and lesson design and rigor, which persisted throughout the years, despite [Woods’s] efforts to remediate his deficiencies.”

The Commission observed that while “[a]ll of these witnesses testified in a clear, concise, unequivocal manner, supported their perspectives with descriptive facts, buttressed by their individual and collective experience in the teaching profession,” Woods’s testimony “was disjointed, difficult to follow, and inconsistent.” The Commission found Woods “contradicted himself throughout his testimony, particularly during cross-examination, and at times appeared to fabricate testimony.” The Commission then concluded Woods’s “testimony neither discredited the testimony of Mr. Reid, Mr. Crosby, Dr. Rasmussen, Mr. Fraser, Mr. Herzfeld, Dr. Austin, and Ms. Mayhugh, nor the memoranda penned by them.”

These findings provide conclusive support for the Commission’s decision and the trial court’s ruling upholding it. It is the trier of fact’s exclusive province to weigh the evidence and witness credibility, and those determinations are binding on the appellate court. (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 160.) “With rhythmic regularity it is necessary for us to say . . . that we have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom.” (*Overton v. Vita–Food Corp.* (1949) 94 Cal.App.2d 367, 370, disapproved on other grounds in *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866, fn. 2.) Consequently, Woods’s challenge to the sufficiency of the evidence to support the judgment must fail.

DISPOSITION

The judgment is affirmed. As the prevailing party, the District is entitled to its costs on appeal.

GOETHALS, J.

WE CONCUR:

IKOLA, ACTING P. J.

THOMPSON, J.